Supreme Court, U.S.
FILED
FEB 25 1993
OFFICE OF THE CLERK

No. 92-1081

In the Supreme Court of the United States

OCTOBER TERM, 1992

JOSÉ MALDONADO ESPINOSA AND
CARMEN MALDONADO ESPINOSA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that petitioner José Maldonado consented to the search of his luggage and that petitioner Carmen Maldonado disclaimed ownership of her luggage.

2. Whether petitioners waived their claim that Carmen Maldonado was questioned while in custody before having been advised of her *Miranda* rights.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A8) is reported at 968 F.2d 101. The opinion of the district court denying petitioners' motion to suppress (Pet. App. A9-A43) is reported at 767 F. Supp. 1176.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1992. Petitioners were granted an extension to and including November 27, 1992, to file a petition for a writ of certiorari. The petition was filed on November 30, 1992, and is therefore out of time under

Rule 13.1 of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners, a brother and sister, entered conditional guilty pleas in the United States District Court for the District of Puerto Rico to one count of possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Petitioner José Maldonado was sentenced to 188 months' imprisonment, to be followed by five years' supervised release. Petitioner Carmen Maldonado was sentenced to 121 months' imprisonment and five years' supervised release. The court of appeals affirmed. Pet. App. A1-A8.

1. At mid-day on February 28, 1991, a Customs Service officer at Luis Muñoz Marín International Airport in Puerto Rico was conducting a periodic training session with a drug-sniffing dog. Alongside ordinary passenger luggage on a conveyor belt, the officer had placed dummy luggage packed with narcotics. Instead of alerting to the planted luggage, however, the dog (which was an experienced, certified drug detection dog) alerted to two other bags, which appeared to be ordinary passenger luggage. The officer contacted his superiors and took the suspect suitcases to a Department of Agriculture/Customs enclave. There the suitcases were x-rayed and observed to contain several loaf-shaped packages and not to contain ordinarily packed items such as clothing. The dog was taken back to the luggage area, where he alerted to two more suitcases. Those suitcases were also x-rayed and observed to contain suspiciously shaped packages. Pet. App. A2, A10-A11.

A Customs officer then examined the luggage tags of the suspect baggage and noted the owners' names (Castro and Colón) and their flight (an American Airlines flight to Miami). An airline agent recalled the two passengers because at check-in they had appeared to be traveling together yet had preferred to be seated separately. The agent pointed out Carmen Maldonado, who was waiting at the gate, as one of the pair. The Customs officer approached her and asked to see her ticket; she replied that her brother had the tickets and was in the restroom. When her brother, José Maldonado, appeared, he stated that a man in a yellow shirt had the tickets. Because no such man was in the concourse area, the Customs officer asked the two passengers if they would accompany him to the Customs area. They agreed. Pet. App. A3, A11-A12.

Petitioners were placed in separate rooms, each with the bags that apparently belonged to him or her. After a frisk for weapons, officers gave each suspect *Miranda* warnings in Spanish, and each suspect executed a written waiver of those rights. Petitioners then revealed their true names. At some point, petitioners were handcuffed to their chairs to prevent flight. At another point, an agent again asked Carmen Maldonado for the airline tickets. She voluntarily reached into her carry-on handbag and produced the tickets, but the tickets contained no luggage claim stubs. An agent then searched the carry-on bag and located the claim stubs for all four bags. Pet. App. A3, A12.

Later that afternoon, a Drug Enforcement Administration (DEA) agent arrived and interviewed José Maldonado, who was still sequestered from his sister.

The DEA agent repeated the earlier *Miranda* warnings and told the suspect that a drug-sniffing dog had alerted to his suitcases and that an x-ray had revealed loaf-shaped packages. The DEA agent said that he thought the bags contained a large quantity of cocaine, and that either he could get a warrant to open the bags or José Maldonado could consent to a search of his luggage. José Maldonado consented to the search. The DEA agent similarly told Carmen Maldonado that he could obtain a warrant to open her bags or she could consent to a search. Carmen Maldonado indicated that she did not care whether the DEA agent opened the bags because the luggage did not belong to her. The DEA agent opened the suitcases and found a total of 60 kilograms of cocaine. Pet. App. A3-A4, A12-A16.[1]

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[1] Before the lower courts, José Maldonado claimed that the DEA agent had asked him to consent both in writing and orally, but that he had refused and the DEA agent had had the suitcases opened anyway. The DEA agent denied that account. The district court heard extensive testimony and determined that José Maldonado's testimony was not credible. Not only had the defendant lied regarding the man in the yellow shirt, but his demeanor while testifying was wholly incredible. In contrast, the DEA agent's testimony was consistent and supported by other witnesses. Accordingly, the district court found that José Maldonado had unambiguously consented to the search of the suitcases. Pet. App. A13-A14. The court of appeals agreed. *Id.* at A5.

Similarly, Carmen Maldonado claimed that she rejected requests for written and oral consents, but the district court found her testimony incredible. There was some confusion as to whether Carmen Maldonado technically consented, disclaimed ownership, or both. The district court found, however, that, at a minimum, Carmen Maldonado disclaimed

2. Petitioners moved to suppress the cocaine, the airline tickets, and the baggage claim checks. As an initial matter, the district court ruled that no special border search rules applied; ordinary Fourth Amendment analysis controlled. Pet. App. A16-A22. The court then concluded that the initial dog sniff of petitioners' luggage was legal. *Id.* at A22-A26. The court concluded, however, that the x-rays of the luggage constituted an impermissible warrantless search of the luggage. *Id.* at A26-A30.[2]

Nevertheless, the court denied petitioners' motion to suppress. It found that the dog sniff, along with petitioners' suspicious behavior, had provided probable cause to detain them in the Customs area. Pet. App. A30-A32. The agents were therefore justified in searching Carmen Maldonado's carry-on handbag incident to her arrest and in seizing the baggage claim stubs they found inside the bag (she had earlier voluntarily produced the plane tickets). *Id.* at A32.

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ownership. Pet. App. A14-A16. The court of appeals agreed. *Id.* at A5.

[2] The district court noted that courts have long approved warrantless and suspicionless x-rays of airline luggage as justifiable administrative searches for weapons and explosives, and that contraband discovered in the course of such searches is admissible evidence. But it concluded that the x-ray search in this case was designed to confirm the presence of contraband, rather than to detect dangerous weapons. According to the court, because the x-ray could not be justified by the administrative search rationale, it was illegal under the current state of the law. Pet. App. A26-A29. The court noted, however, that passengers going to airports expect to have their luggage x-rayed and perhaps hand-searched, which suggests that they therefore have a limited expectation of privacy in their luggage. *Id.* at A29-A30.

Turning to the search of the suitcases and the seizure of the cocaine found inside them, the district court found that José Maldonado voluntarily consented to the search and that the results of the x-ray did not influence or coerce that consent. The court stated:

> Distilled to its essence, the message which [the DEA agent] gave Mr. José Maldonado was that the agents believed the bags contained drugs and that they could and would obtain a search warrant if consent was refused. It is the same message with or without the specifics about the X-ray. * * * We think that Mr. José Maldonado would have consented even if he was advised only of the dog sniff.

Pet. App. A37.

The district court also found that Carmen Maldonado had "failed to manifest any privacy interest in the luggage or the contents thereof, and in fact affirmatively disclaimed any such interest." Pet. App. A40. The court also found that the x-ray had not affected that disclaimer. *Id.* at A41. According to the court,

> [w]hile the X-ray provided the police with more specific information than they had after the dog sniff, it did not alter the basic message given to Carmen Maldonado: the luggage contained [a] contraband substance, and the agents were going to open the luggage either on consent or with a warrant. We see no reason to believe that the detail added by the X-ray "coerced" the disclaimer.

Ibid.

3. Petitioners entered pleas of guilty, conditioned on their right to appeal the denial of their motion to suppress. On appeal, petitioners primarily argued that their consent and disclaimer were not voluntary because the allegedly unconstitutional x-ray influenced them. The court of appeals disagreed, holding that the district court's findings were adequately supported and not clearly erroneous. Pet. App. A5-A6. Because the consent and disclaimer were valid, the court of appeals declined to consider whether the warrantless x-ray was an unconstitutional search. *Id.* at A6.[3]

Petitioners also contended on appeal that the claim stubs obtained from the search of Carmen Maldonado's carry-on luggage should have been suppressed because that search exceeded the permissible scope of a search incident to arrest. The court of appeals noted, however, that the carry-on bag was on the table next to her and within her reach and accordingly concluded that the warrantless search of that bag was permissible as a search incident to arrest. Pet. App. A6-A7. Finally, petitioners argued that the airline tickets should have been suppressed because Carmen Maldonado had produced them from her handbag in

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[3] The court of appeals had ordered the parties to submit supplemental letter briefs on the constitutionality of x-raying luggage after obtaining probable cause to believe that the luggage contains illegal narcotics. As petitioners note (Pet. 21), those briefs addressed the question whether air travelers have reduced expectations of privacy, which the district court had suggested was the case. The court of appeals, however, decided that, because the consent and disclaimer were voluntary, it did not need to reach the question of the legality of the x-ray examination. Pet. App. A6.

response to custodial interrogation that had not been preceded by *Miranda* warnings. The court of appeals ruled, however, that petitioners had waived their *Miranda* claim by not raising it in the district court. In any event, the court concluded that the waiver had worked no injustice because, even assuming that no *Miranda* warnings had been given, the government agents would inevitably have discovered the tickets and claim stubs during the search incident to petitioners' arrest. *Id.* at A7-A8.

ARGUMENT

1. Petitioners contend, as they did below, that the x-ray of their luggage was an unconstitutional search, that their consent and disclaimer were influenced by that illegal search, and hence that the cocaine should be suppressed as a fruit of an illegal search. Both lower courts concluded, however, that José Maldonado's consent to search his luggage and Carmen Maldonado's disclaimer of ownership of her luggage were not influenced by the x-ray, even assuming that the x-ray was unconstitutional. Because both lower courts resolved those factual issues against petitioners, further review is not warranted. See, *e.g.*, *Goodman* v. *Lukens Steel Co.*, 482 U.S. 656, 665 (1987); *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317 n.5 (1985); *United States* v. *Doe*, 465 U.S. 605, 614 (1984).

In any event, the factual findings below were correct. Petitioners do not contest that the dog sniff provided the agents with probable cause to believe that the luggage contained drugs and therefore provided them with enough evidence to obtain a search warrant. See *United States* v. *Sokolow*, 490 U.S. 1

(1989); *Florida* v. *Royer*, 460 U.S. 491, 506 (1983) (plurality opinion of White, J.). The x-ray merely confirmed the agents' suspicions—which already amounted to probable cause—and told them the shape of the packages, an essentially irrelevant detail. As the district court reasoned (Pet. App. A37, A41), even if the agents had never x-rayed the luggage, they would have told petitioners the same thing: that they believed the luggage contained illegal drugs, and that if petitioners chose not to consent to an examination of the luggage, they would obtain a warrant to search it. Therefore, even assuming that the x-ray was illegal, it could not have tainted or rendered involuntary either José Maldonado's consent or Carmen Maldonado's disclaimer. See *United States* v. *Roman*, 849 F.2d 920, 922-923 (5th Cir. 1988); *United States* v. *Race*, 529 F.2d 12, 15 (1st Cir. 1976). As the court of appeals put it, "the Maldonados consented and disclaimed because they realized that failure to do so would do them no good—the agents would simply obtain a warrant and search the suitcases anyway." Pet. App. A6.

Petitioners suggest (Pet. 19-20) that the agents coerced them by stating that a warrant would be sought if they did not consent to the search. They argue that the consent and disclaimer constituted mere submission to a claim of lawful authority, which does not constitute voluntary action under *Bumper* v. *North Carolina*, 391 U.S. 543, 548-549 (1968). But simply informing a suspect of the authorities' intention to seek a search warrant does not automatically render a consent or disclaimer involuntary, especially where, as here, the police have probable cause to

search. See, *e.g.*, *United States* v. *Duran*, 957 F.2d 499, 502 (7th Cir. 1992); *United States* v. *Blakeney*, 942 F.2d 1001, 1015-1016 (6th Cir.), cert. denied, 112 S. Ct. 646 (1991); *United States* v. *Hummer*, 916 F.2d 186, 190 (4th Cir. 1990), cert. denied, 111 S. Ct. 1608 (1991); *United States* v. *Kaplan*, 895 F.2d 618, 622 (9th Cir. 1990); *United States* v. *Twomey*, 884 F.2d 46, 51-52 (1st Cir. 1989), cert. denied, 496 U.S. 908 (1990). Rather, voluntariness is determined by examining all the relevant circumstances. *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 227 (1973). In this case the district court did just that.

As the court of appeals concluded, the district court's finding that the consent and disclaimer were voluntary and unaffected by information regarding the x-ray was "a perfectly plausible conclusion to draw from the record." Pet. App. A6. The record reveals, for example, that the DEA agent's statements made it clear that either a warrant or consent would be necessary; petitioners thus knew that they did not have to accede to the agent's request. Moreover, petitioners had received *Miranda* warnings by this time and were not mistreated while in custody; there were no indicia of coercion. Furthermore, petitioners persistently claimed in the courts below that they refused to consent, which confirms that they knew they had the right not to consent. There is thus no reason for this Court to disturb the factual findings concurred in by the two lower courts.

2. Petitioners also contend that the court of appeals should have reached their claim that Carmen Maldonado produced the airline tickets from her handbag in response to custodial questioning without

Miranda warnings. The court of appeals correctly determined, however, that petitioners waived this issue by not raising it before the district court.

Petitioners correctly observe (Pet. 24) that their motion stated that they moved pursuant to the Fourth and Fifth Amendments to suppress their arrest and evidence seized as a result of the search of the carry-on handbag and the suitcases. The grounds stated in their motion did not, however, raise any *Miranda* argument. Reading the motion most generously, the only Fifth Amendment grounds that petitioners even arguably raised were that the agents acted in bad faith, or that the admission of the evidence would render the proceedings fundamentally unfair.[4]

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[4] The stated grounds for the motion read, in their entirety:

1. The defendants were detained on February 28, 1991 at the Luis Muñoz Marín Airport, by U.S. Customs agents without any probable cause [and with] no reasonable suspicion.

2. A pat-down or frisk of both defendants and a search of the carry-on handbag was conducted by customs agents for alleged "security reasons" to search for weapons. In the context of this case, no reasonable officer could [have] been concerned about his/her safety. The "security" pat down search and the search of defendants' carry on handbag was a pretext for a warrantless, illegal and unreasonable search. The two airline tickets and the four claim checks found in the handbag must be suppressed as fruits of the illegal search.

3. The warrantless searches conducted of the four locked suitcases were illegal and unreasonable. No exigent reasons existed that could justify a warrantless search nor [was] any consent * * * given by defendants.

Petitioners did not develop any *Miranda* argument before the district court. Their statement in a supporting memorandum of law (quoted at Pet. 25) that evidence derived from unconstitutional or illegal acts is tainted and must be suppressed hardly put the district court on notice that petitioners meant to raise a *Miranda* claim. Not surprisingly, the district court did not explore that issue at the suppression hearing or in its lengthy and careful opinion. Instead, the court merely found that Carmen Maldonado produced the plane tickets voluntarily. See Pet. App. A12, A32 n.7. Because petitioners waived their *Miranda* argument in the district court, the court of appeals properly declined to consider it, as should this Court.

There is, in any event, no force to the *Miranda* argument. In the district court, the agent who asked Carmen Maldonado for the tickets recalled that, before he questioned either her or her brother, he had

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4. The statements given by defendants were the product of the illegal and [un]reasonable searches and seizures.

5. U.S. Customs agents do not have authority under the facts of this case to conduct warrantless searches of purely domestic travellers.

6. The defendants had a reasonable expectation of privacy against such unconstitutional and intrusive seizure and searches.

7. The defendants were not promptly brought before a U.S. Magistrate as mandated by Rule 5(A) of the Federal [R]ules of [C]riminal Procedure.

Defs.' Mot. to Suppress Arrest and Evidence 2-3, Cr. No. 91-0122 (JAF) (D.P.R. filed Apr. 30, 1991).

asked whether both petitioners had received *Miranda* warnings and was told yes. See Gov't C.A. Br. 34. Although petitioners contend otherwise, the district court found that neither petitioner was a credible witness. Pet. App. A14. Moreover, *Miranda* prohibits the admission of statements obtained without the required warnings; it does not apply to other evidence that is obtained as a result of custodial interrogation. See *Oregon* v. *Elstad*, 470 U.S. 298 (1985); *New York* v. *Quarles*, 467 U.S. 649, 665-672 (1984) (O'Connor, J., concurring in the judgment in part and dissenting in part); *United States* v. *Gonzalez-Sandoval*, 894 F.2d 1043, 1047-1048 (9th Cir. 1990); *United States* v. *Barte*, 868 F.2d 773, 774 (5th Cir. 1989), cert. denied, 493 U.S. 995 (1989); *United States* v. *Sangineto-Miranda*, 859 F.2d 1501, 1516-1518 (6th Cir. 1988). And, as the court of appeals observed (Pet. App. A7-A8), even if Carmen Maldonado's production of the tickets did result from impermissible interrogation, and even if the production of the tickets could be regarded as the improper fruit of a *Miranda* violation, the government would inevitably have discovered the tickets as part of the search incident to arrest that occurred shortly thereafter. Cf. *Nix* v. *Williams*, 467 U.S. 431 (1984).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1993